

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOSE LUIS CARRIZALES,
Plaintiff,

v.

LOWE'S HOME CENTERS, LLC
Defendant.

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CIVIL ACTION NO. 1:21-cv-00132
JURY TRIAL DEMANDED

DEFENDANT LOWE'S HOME CENTERS, LLC'S
NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Federal Rule of Civil Procedure 81, and Local Rule 81, Defendant, Lowe's Home Centers, LLC, hereby removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Lowe's sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 107th Judicial District Court of Cameron County, Texas, on or about July 2, 2021 styled *Jose Luis Carrizales v. Lowe's Home Centers, LLC*; Cause No. 2021-DCL-03919-A (the "State Court Action"). According to the Plaintiff's Petition, this case arises from an alleged injury sustained by Plaintiff, Jose Luis Carrizales, on or about July 2, 2019 while shopping at a Lowe's store located in Harlingen, Cameron County, Texas.

B. DOCUMENTS FROM REMOVED ACTION

2. Pursuant to Local Rule 81 and 28 U.S.C. 1446(a), Lowe's attaches the following documents to this Notice of Removal as Exhibit "A":

- i. All executed service of process;
- ii. Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings;
- iii. The docket sheet;
- iv. Index of matters being filed; and
- v. A list of all counsel of record, including addresses, telephone numbers and parties presented.

C. REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a State Court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The Brownsville Division of the Southern District Court of Texas is the United States district and division embracing Cameron County, Texas, the county in which the State Court Action is pending.

4. Lowe's was served with a copy of Plaintiff's Original Petition, ("Petition") on July 29, 2021, through its registered agent. Therefore, this Notice of Removal is filed within the time limits specified in 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as *Exhibit "A"* and incorporated herein for all purposes.

6. Lowe's will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 107th Judicial District Court, Cameron County Texas, where the action is currently pending.

D. VENUE IS PROPER

7. The United States District Court for the Southern District of Texas is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 107th Judicial District Court of Cameron County Texas, is located within the jurisdiction of the United States District Court for the Southern District of Texas, Brownsville Division.

E. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS

8. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

9. As admitted in his Petition, Plaintiff is an individual who resides in Cameron County, Texas."¹

10. Defendant Lowe's Home Centers, LLC is a foreign Limited Liability Company organized and existing under the laws of the State of North Carolina. The Limited Liability Company is comprised of six managing members, Akinjide Falaki who is domiciled in and a resident of the State of North Carolina; David R. Green, who is domiciled in and a resident of the State of North Carolina; Beth R. MacDonald who is domiciled in and a resident of the State of North Carolina, Tiffany L. Mason, who is domiciled in and is a resident of the State of North Carolina; Brandon J. Sink, who is domiciled in and a resident of the State of North Carolina, and Gary White, who is domiciled in and a resident of the State of North Carolina. Additionally, Lowe's Home Centers, LLC's principal office is located at 1605 Curtis Bridge Road in Wilkesboro, North Carolina 28687. Pursuant to 28 U.S.C. § 1332(c)(1), Lowe's Home Centers, LLC is not a citizen of the State of Texas.

11. Thus, because the Plaintiff is a resident of the State of Texas and Defendant Lowe's Home Centers, LLC is not, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

¹ Pl. Original Petition at ¶ 2.1.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

12. Plaintiff alleges in his Original Petition that he seeks damages in monetary relief over \$200,000 but less than \$1,000,000.² Plaintiff also seeks to recover damages against Lowe's for: (a) past and future medical expenses; (b) past and future physical pain and suffering; (c) past and future physical impairment; and (d) past and future mental anguish.³

13. Therefore, based on all of the aforementioned facts, the State Court Action may be removed to this Court by Lowe's in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

14. Pursuant to 28 U.S.C. § 1446(d), LOWE'S is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 107th Judicial District Court of Cameron County Texas, in which this action was originally commenced.

² See Plaintiff's Original Petition at ¶ 7.1.

³ *Id* at ¶¶ 6.1.1 – 6.1.5.

H. CONCLUSION

15. Defendant, Lowe's Home Centers, LLC, hereby removes the above-captioned action from the 107th Judicial District Court of Cameron County Texas, and requests that further proceedings be conducted in the United States District Court for the Southern District of Texas, Brownsville Division, as provided by law.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
LOWE'S HOME CENTERS, LLC**

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of August 2021, a true and correct copy of the foregoing has been forwarded to all counsel of record as follows:

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ATTORNEY FOR PLAINTIFF

☒ E-MAIL/E-SERVICE
☐ HAND DELIVERY
☐ FACSIMILE
☐ OVERNIGHT MAIL
☐ REGULAR, FIRST CLASS MAIL
☐ CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Raul I. Saenz

Raul I. Saenz